

REMARKS

As of this response, claims 1-16 are pending and no claim is presently canceled, withdrawn or amended. A Declaration under 37 CFR 1.131 by the inventor of the present application is filed herewith along with one or more supporting exhibits. Applicant respectfully traverses the rejection of claims 1-16 and requests reconsideration and allowance of all pending claims.

The Office Action mailed February 15, 2008 rejected claims 1-16 under 35 USC § 102(b) as being anticipated by Deichler, Jr. (US 6,708,604).

As an initial matter, Applicant respectfully questions the propriety of the rejection. Statute 35 U.S.C. 102(b) states that a person shall be entitled to a patent unless “the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States...”

The filing date of the present application is October 10, 2003. The referenced Deichler patent was filed on May 22, 2003 and issued on March 23, 2004. There is no evidence that the Deichler patent application was published in any form prior to its issuance in 2004. The Deichler patent does not claim priority to any other applications. Consequently, the Deichler application was not patented, nor does it constitute a printed publication that was published, more than one year before the filing of the present application. Furthermore, the Deichler patent does not reflect any indication of prior publication of its substance in any form anywhere, public use, sale or offer for sale that would qualify as a barring event under 35 USC 102(b). The Examiner has presented no evidence to the contrary. Applicant contends that the rejection under 35 USC 102(b) is improper and respectfully requests the rejection be withdrawn.

That issue aside, Applicant has considered the Examiner's remarks and considered the relevance of the Deichler '604 patent. Applicant respectfully traverses any potential rejection based on anticipation by the Deichler '604 patent by the submittal herewith of a Declaration pursuant to 37 CFR 1.131, which section reads as follows:

(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the earlier of its publication date or date that it is effective as a reference under 35 U.S.C. 102(e). Prior invention may not be established under this section in any country other than the United States, a NAFTA country, or a WTO member country. Prior invention may not be established under this section before December 8, 1993, in a NAFTA country other than the United States, or before January 1, 1996, in a WTO member country other than a NAFTA country. Prior invention may not be established under this section if either:

(1) The rejection is based upon a U.S. patent or U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 41.203(a) of this title, in which case an applicant may suggest an interference pursuant to § 41.202(a) of this title; or

(2) The rejection is based upon a statutory bar.

(b) The showing of facts shall be such, in character and weight, as to establish **reduction to practice prior to the effective date of the reference**, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

Applicant respectfully submits that, for reasons stated above, the rejection is unsubstantiated as to being based upon a statutory bar and that the Declaration under 37 CFR 1.131, with exhibits, by the inventor of the present application filed herewith satisfies the requirements of 37 CFR 1.131(b) to establish invention and reduction to practice of the subject matter of all of the pending claims prior to the effective date of the Deichler reference.

In summary of the attached affidavit and exhibits, the inventor attests that photographs of an embodiment of the subject invention, being used in various configurations and positively demonstrating all of the aspects recited in the presently pending claims, were taken well before the effective filing date of the Deichler '604 patent introduced in the recent Office Action.

CONCLUSION

Applicant respectfully requests that the Examiner reconsider the outstanding rejection and that it be withdrawn, particularly considering the unsubstantiated basis for any statutory barring event under 35 USC 102(b). Applicant respectfully requests consideration of the Declaration under 37 CFR 1.131 filed herewith to the extent it may address any other basis of rejection by which the Deichler patent might have been considered by the Examiner to anticipate the invention and reduction to practice of the presently claimed invention by the Applicant. Applicant believes that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided. Prompt and favorable consideration of these remarks are respectfully requested.

Respectfully submitted,



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Date: 5/3/08

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